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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

OWEN DIAZ,

Plaintiff,

v.

TESLA, INC. DBA TESLA MOTORS, INC.,

Defendant.

Case No. 3:17-cv-06748-WHO

PARTIES' JOINT WITNESS LIST

Pretrial Conference: February 27, 2023
Time: 2:00 p.m.

Place: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

Trial: March 27, 2023
Complaint Filed: October 16, 2017

The parties intend to call the following witnesses live:

Witness	Plaintiff Time Estimate (hours)	Defense Time Estimate	Designating Party	Testimony Description
Joyce Delagrande ¹	20 min.	25 min.	Defendant	<p><u>Plaintiff</u>: Testimony regarding Owen Diaz's work performance at Tesla subject to Plaintiff's in limine; her failure to act on and address Mr. Diaz's complaints of harassment and discrimination during his tenure in the Fremont facility.</p> <p><u>Tesla</u>: <i>Associate Manager Supply Chain</i>. Testimony about Owen Diaz's job performance and complaints from her and other co-workers about Mr. Diaz, including his lack of professionalism. Ms. Delagrande will testify regarding Mr. Diaz's claims of harassment by Mr. Hurtado and Tesla's response to these alleged claims.</p>
Jackelin Delgado	15 min.	10 min.	Plaintiff and Defendant	<p><u>Plaintiff</u>: Testimony regarding her investigation into Owen Diaz's complaint regarding a drawing of a racist effigy, her failures to follow up with portions of the documented written complaint, and Tesla employees' decisions to issue Martinez minimal discipline.</p> <p><u>Tesla</u>: <i>Chartwell employee</i>. Testimony re her investigation into Owen Diaz's complaint about Ramon Martinez's drawing.</p>
Owen Diaz	120 min.	120 min.	Plaintiff and Defendant	<p><u>Plaintiff</u>: Testimony regarding the racial harassment he experienced in the Fremont facility, including verbal and visual harassment and the resulting emotional distress; complaints made to Tesla management that went unaddressed; the racial harassment he witnessed towards other employees like Demetric Di-az in the Fremont facility²; the emotional distress he</p>

¹ Plaintiff has moved *in limine* to exclude or limit Ms. DeLaGrande's testimony.

² Tesla has moved *in limine* to exclude testimony regarding evidence of alleged racist conduct not directed at or experienced by Mr. Diaz. Plaintiff opposes this motion.

				suffered and continues to suffer as a result of Tesla's conduct. <u>Tesla</u> : Testimony about the alleged mistreatment he claims while assigned to the Fremont facility; any alleged complaints he made to Tesla; his communications with D. Diaz and recommendation to him and others to apply to work at the Fremont facility; the alleged emotional distress that he claims to have suffered; his work performance and discipline received while assigned to Tesla; his employment after his assignment at Tesla, including his efforts to find employment after his assignment ended.
Andres Donet ³	10 min.	5 min.	Defendant	<u>Tesla</u> : <i>Tesla's Janitorial Employee Manager</i> . Testimony about cleaning of bathrooms and whether graffiti was removed during the relevant time period of Mr. Diaz's assignment.
Chenoa Chavez ⁴	20 min.	30 min.	Defendant	<u>Plaintiff</u> : Plaintiff objects to this witness testifying and to her testifying as a PMK. If she is permitted to testify, Plaintiff will elicit testimony regarding Tesla's failure to respond to contractor complaints; Tesla's failure to take action regarding the use of racial slurs in its facility; Tesla employees' failure to follow written policies when investigating complaints of harassment and discrimination. ⁵ <u>Tesla</u> : <i>Tesla's 30(b)(6) witness</i> . Ms. Chavez will testify regarding Tesla's Human Resources policies.

³ Tesla is requesting Mr. Donet be permitted to testify as part of Tesla's motion *in limine* No. 1. Given that Tesla opted not to call Mr. Donet during the original trial, Plaintiff opposes this motion.

⁴ Plaintiff has moved *in limine* to limit Ms. Chavez's testimony to the scope of Tesla's previous 30(b)(6) witness at the original trial. Plaintiff is concerned that Ms. Chavez will inject new policies or remedial measures into this case which will require Plaintiff to present a rebuttal case on all of the continued racist conduct since he left Tesla in March 2016.

⁵ Consistent with the Court's order regarding Tesla's PMK (Dkt. 376), Tesla objects to counsel for Mr. Diaz eliciting any testimony from Ms. Chavez that is inconsistent with, or materially different from, the designated deposition testimony from Ms. Heisen, to the extent Tesla is held to that same standard.

				procedures, and practices related to anti-harassment and discrimination at the Tesla factory; internal complaint and investigative procedures; training of Tesla employees related to anti-harassment and discrimination policy.
Wayne Jackson	45 min.	30 min.	Plaintiff and Defendant	<p><u>Plaintiff</u>: Testimony regarding Owen Diaz's work at the Fremont facility; complaints regarding the use of racial slurs in the Fremont facility and Tesla's failure to issue appropriate discipline; Owen Diaz's complaints regarding the use of racial slurs, a racial assault, and the placement of a fascist effigy in the Fremont facility; and Tesla's failure to issue appropriate discipline to harasser Ramon Martinez.</p> <p><u>Tesla</u> : <i>On-Site Program Manager employed by NextSource</i>. Testimony re Owen Diaz's assignment at Tesla; his communications with Tesla and CitiStaff re Owen Diaz; Owen Diaz's relationships with Mr. Jackson and other workers at Tesla; Owen Diaz's internal complaints, Wayne Jackson's involvement in the investigation of those complaints, and the outcome of the investigations.</p>
La 'Drea Jones	30 min.	10 min.	Plaintiff	<p><u>Plaintiff</u>: Testimony regarding the emotional distress, mental pain and suffering, and loss of enjoyment of life that Mr. Diaz experienced during and following his work at Tesla; and the way this emotional distress has continued to affect Mr. Diaz.</p> <p><u>Tesla</u>: Testimony regarding Mr. Diaz's behavior, and conversations with Ms. Jones before, during and after his employment with Tesla and her observations regarding Mr. Diaz's mental and emotional state.</p>
Tomatsu Kawasaki	40 min.	30 min.	Plaintiff and Defendant	<u>Plaintiff</u> : Testimony regarding Owen Diaz's work in the Fremont facility; Mr. Diaz's complaints regarding the

				use of racial slurs and other racist conduct in the facility; Tesla's handling of complaints of harassment by contractors and other Black workers; and the use of racial slurs and other racist conduct in the Fremont facility. <u>Tesla: Former Elevator Lead assigned to Tesla.</u> Testimony re Owen Diaz's work performance and promotion; Owen Diaz's altercation with and complaint about Judy Timbreza; Tomatsu Kawasaki's response to Timbreza altercation and altercation with Ramon Martinez.
Charles Mahla, Ph.D. ⁶	20 min.	15 min.	Plaintiff	Testimony regarding Tesla's financial value as of the time of the original trial.
Ramon Martinez	30 min.	45 min.	Plaintiff ⁷ Defendant	<u>Plaintiff:</u> Testimony regarding his harassment of Owen Diaz, including a racial attack and leaving a recreation of a racist cartoon entitled "Inki the Caveman" in Mr. Diaz's work area; and Tesla's response to Mr. Diaz's complaints of harassment and discrimination. <u>Tesla: Former Recycling Lead.</u> Testimony re his interactions with Owen Diaz; his complaint about Owen Diaz and Owen Diaz's complaint(s) about him, including outcome of complaint(s).

⁶ Mr. Diaz has moved *in limine* to allow Mr. Mahla to testify regarding Tesla's value as of the time of the first trial. Tesla opposes that motion, and consistent with the Court's order, the value presented to this jury should be the same value presented to the first jury.

⁷ **Defendant's Contention:** Should Tesla elect not to call Mr. Martinez at trial, Tesla objects to Mr. Diaz calling Mr. Martinez as a witness given that Mr. Diaz did not call him in the first trial, and consistent with this Court's order, "[t]he parties will be bound by the choices made in the original trial." Dkt. 376. **Plaintiff's Contention:** Mr. Martinez testified in the first trial. Plaintiff properly identified Mr. Martinez as a potential witness for Plaintiff in the second trial. Plaintiff therefore is entitled under the Court's rules to call Mr. Martinez as an adverse witness in this retrial.

1	Amy Oppenheimer ⁸	20 min.		Plaintiff	Testimony regarding the standard of care employers owe Black employees in preventing harassment and discrimination, and remedying complaints of harassment and discrimination as that relates to Tesla's reprehensible conduct.
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5	Victor Quintero	30 min.	30 min.	Plaintiff and Defendant	Plaintiff: Testimony regarding the complaints of harassment and discrimination lodged by Owen Diaz and other Black employees; and Tesla's response to those complaints.
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9					<u>Tesla: Ed Romero's manager.</u> Testimony re Owen Diaz's assignment at Tesla, including his work performance and end of assignment; Ramon Martinez's performance and alleged complaints against Ramon Martinez.
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13	Anthony Reading, Ph.D.	30 min.	15 min.	Plaintiff	Plaintiff: Testimony regarding the emotional distress, mental pain and suffering, and loss of enjoyment of life that Mr. Diaz experienced during and following his work at Tesla; the way this emotional distress has continued to affect Mr. Diaz; and the likely duration and extent of Mr. Diaz's injuries.
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18	Ed Romero	45 min.	30 min.	Plaintiff and Defendant	Plaintiff: Testimony regarding the complaints of harassment and discrimination lodged by Owen Diaz and other Black employees ⁹ ; and Tesla's response to those complaints, specifically Mr. Diaz's verbal and written complaints regarding the use of racial slurs, racist graffiti, and a racist effigy.
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23					<u>Tesla: Owen Diaz's Manager.</u> Testimony re Owen Diaz's assignment at Tesla, including his supervision of Owen and Owen's interactions with other workers;
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⁸ Tesla has moved to exclude Ms. Oppenheimer's testimony as part of motion *in limine* No. 2 and Plaintiff opposes this motion.

⁹ Tesla has moved *in limine* to exclude testimony regarding evidence of alleged racist conduct not directed at or experienced by Mr. Diaz and Mr. Diaz opposes this motion.

				Owen's alleged complaints that were made to Ed Romero; and Ed Romero's involvement in complaints and investigations.
Michael Wheeler	30 min.	10 min.	Plaintiff	<u>Plaintiff</u> : Testimony regarding Owen Diaz's work in the Fremont facility; Mr. Diaz's complaints regarding the use of racial slurs and other racist conduct in the facility; Tesla's handling of complaints of harassment by contractors and other Black workers; and the use of racial slurs and other racist conduct in the Fremont facility.
Robert Hurtado ¹⁰	45 min.	30 min.	Defendant	<i>Materials Supervisor</i> . At the first trial, Mr. Diaz identified Mr. Hurtado as one of his harassers at Tesla and testified extensively regarding alleged misconduct by Mr. Hurtado, including that Mr. Hurtado called him the "n word" more than 30 times, culminating in an altercation between the two on February 26, 2016, shortly before Mr. Diaz left Tesla. Mr. Hurtado will testify regarding Mr. Diaz's claims of harassment by Hurtado, and Tesla's response to these alleged claims.

The following witnesses will testify via deposition designations; their designations are being separately submitted:

Witness	Designating Party	Testimony Description
Demetric Di-Az	Plaintiff and Defendant	<u>Plaintiff</u> : Testimony regarding harassment towards Mr. Di-az that Owen Diaz witnessed during his employment in the Tesla facility. <u>Tesla</u> : testimony regarding Mr. Di-az's application to Tesla and

¹⁰ Tesla is requesting Mr. Hurtado be permitted to testify as part of Tesla's motion *in limine* No. 1. Given that Tesla opted not to call Mr. Hurtado during the original trial, Plaintiff opposes this motion.

		conversations with his father prior to applying.
Annalisa Heisen	Plaintiff	<u>Plaintiff</u> : Testimony regarding Tesla's policies and procedures with respect to racial harassment; Tesla's failure to follow these policies and procedures with respect to Owen Diaz's complaints; and Tesla's failure to take remedial action in response to documented complaints from Mr. Diaz and other Black workers. ¹¹
Erin Marconi	Plaintiff	<u>Plaintiff</u> : Testimony regarding Tesla's policies and procedures with respect to racial harassment; Tesla's failure to follow these policies and procedures with respect to Owen Diaz's complaints; Tesla's failure to take remedial action in response to documented complaints from Mr. Diaz and other Black workers; and her responses to Mr. Diaz's complaints of the use of racial slurs, a racist attack, and the placement of a racist effigy in the Fremont facility..
Kevin McGinn	Plaintiff	<u>Plaintiff</u> : Testimony regarding the investigation process employees at the Tesla facility were meant to follow after they received complaints of harassment and discrimination from contract employees.

¹¹ **Defendant's Contention:** Tesla has moved *in limine* to exclude testimony regarding evidence of alleged racist conduct not directed at or experienced by Mr. Diaz. **Plaintiff's Contention:** As of the date of this filing, Tesla has not provided Plaintiff with any objections to his designations of Ms. Heisen's testimony

1 DATED: February 8, 2023

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4 By /s/ Daniel C. Posner

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